



MEETING DATE: 9/5/06

ITEM NO:

6

## COUNCIL AGENDA REPORT

DATE: August 31, 2006

TO: MAYOR AND TOWN COUNCIL

FROM: DEBRA J. FIGONE, TOWN MANAGER

SUBJECT: CONSIDER AN APPEAL OF A PLANNING COMMISSION DECISION REGARDING MODIFICATIONS OR REVOCATION OF CONDITIONAL USE PERMIT U-94-44 (GOGUEN'S LAST CALL) FOR THE OPERATION OF A BAR ON PROPERTY ZONED C-2. APN: 529-07-046. PROPERTY LOCATION: 408 N. SANTA CRUZ AVENUE. PROPERTY OWNER: LOS GATOS SHOPPING CENTER, LLC. APPELLANT: CYNTHIA GOGUEN.

### RECOMMENDATION:

1. Open and hold the public hearing.
2. Close the public hearing.
3. Uphold the Planning Commission's decision to modify Conditional Use Permit U-94-44 for Goguen's Last Call (requires motion).
4. Refer to the Town Attorney for the preparation of the appropriate resolution.

If the Town Council determines that the Planning Commission's decision should be reversed or modified:

1. The Council needs to find one or more of the following:
  - (1) where there was error or abuse of discretion on the part of the Planning Commission; or
  - (2) the new information that was submitted to the Council during the appeal process that was not readily and reasonably available for submission to the Commission; or
  - (3) an issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.

PREPARED BY:

BUD N. LORTZ  
DIRECTOR OF COMMUNITY DEVELOPMENT

Reviewed by: \_\_\_\_\_ Assistant Town Manager OK Town Attorney  
\_\_\_\_\_ Clerk Administrator \_\_\_\_\_ Finance \_\_\_\_\_ Community Development

2. If the predominant reason for modifying or reversing the decision of the Planning Commission is new information as defined in Subsection (2) above, it is the Town's policy that the application be returned to the Commission for review in light of the new information unless the new information has a minimal effect on the application.
3. Refer to the Town Attorney for preparation of the appropriate resolution.

In this hearing, Council may take into consideration the Planning Commission's decision to modify the Conditional Use Permit (CUP) for Goguen's Last Call as well as staff's original recommendation to revoke the CUP. Based on its review of the evidence, Council may uphold the Commission decision, modify the Conditions of Approval, or revoke the CUP.

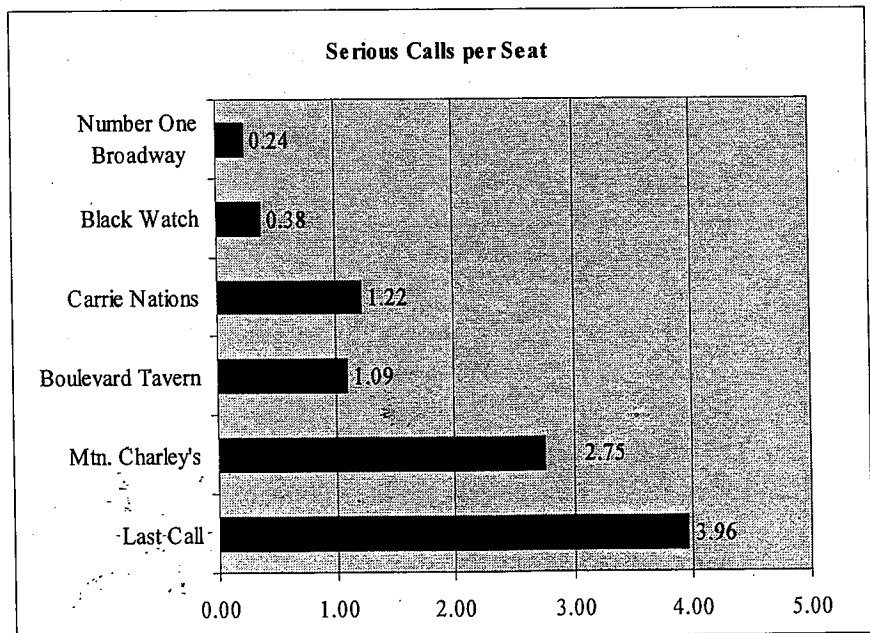
#### BACKGROUND:

The Town Council continued this item from the meeting of August 21, 2006 at the request of the appellant's attorney. The staff report and background information was previously provided to the Council.

#### DISCUSSION:

At the request of Mr. Washburn, the attorney for Goguen's Last Call, the Police Department provided a spreadsheet comparing calls for service between the subject bar and six other bars in Town between November 1, 1999 and May 1, 2006 (Attachment 14). There is a slight difference in the number of serious calls for service at Goguen's Last Call between this spreadsheet and the number referenced in previous staff reports (178 versus 189). The Police Department collected data in a different manner for this spreadsheet. Staff's previous conclusions, however, remain unchanged.

There is a wide difference in seating between the six bars, ranging from 45 seats (Goguen's and Carrie Nations) to 110 at Mountain Charley's (Attachment 15). To allow for a comparison between bars that accounts for the number of seats, staff prepared the chart at right that illustrates the number of serious calls for service per



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seat for each bar. Goguen's Last Call generates the most calls for service per seat of the six bars studied. A chart illustrating total calls per seat is also attached (Attachment 16). For the purposes of the charts, staff omitted data from 180 Restaurant/Los Gatos Bar & Grill since the establishment was closed for a portion of the time period that was studied.

When comparing Mountain Charley's and Goguen's Last Call, one should note that Mountain Charley's is a much more intensive use since it has music and dancing. Despite this, Goguen's Last Call generates 44% more calls per seat than Mountain Charley's. Goguen's Last Call is more directly comparable to Black Watch, Carrie Nations and Boulevard Tavern. It generates 324% to 1036% more serious police service calls per seat than these three bars.

### CONCLUSION:

In order to revoke the Conditional Use Permit for Last Call, the Council must find that the use is detrimental to the public health or safety, or is a nuisance. Staff finds the totality of evidence, including narcotic sales, disproportionate impacts to police services, and the ongoing pattern of unsanitary business practices, clearly establishes that this use meets the required grounds for revocation of the CUP.

The Planning Commission concluded that the use is detrimental to the public health and safety, and is a nuisance as required by Section 29.20.315 of the Town Code and elected to modify the existing Conditional Use Permit. As requested by the Commission, staff developed a set of stringent conditions of approval that are designed to minimize impacts to the public health and safety, abate the current nuisance issues, and provide for immediate revocation should future violations occur.

### Attachments:

Previously Submitted: (Copies are available for review in the Clerk Administrator's Office)

1. Planning Commission Report dated June 8, 2006 which includes:
  - a. Memorandum from Scott R. Seaman, Chief of Police, dated May 31, 2006 plus attachments
  - b. Memorandum from Roy Alba, Code Enforcement Officer, dated May 30, 2006 plus attachment
  - c. Business Owner's Statement prepared by Kent G. Washburn, dated June 2, 2006.
  - d. Letter to Cynthia Goguen dated April 28, 2006
  - e. Planning Commission Report dated May, 4, 2006
  - f. Planning Commission Desk Item dated May, 10, 2006
  - g. Letters from Los Gatos Shopping Center, LLC dated April 28, 2005 and February 28, 2006
  - h. Conditional Use Permit U-94-44
  - i. Planning Commission Desk Item dated June 14, 2006
2. Planning Commission Report dated June 23, 2006 which includes:
  - a. Required Findings for Modification of CUP

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- b. Draft Conditions of Approval
- c. Letter from Kent G. Washburn dated June 19, 2006
- d. Planning Commission Report dated June 8, 2006
- e. Town Alcohol Policy
- f. Planning Commission Desk Item dated June 28, 2006
3. Verbatim Transcript of Planning Commission meeting of June 14, 2006
4. Verbatim Transcript of Planning Commission meeting of June 28, 2006
5. Appeal of Planning Commission Decision Form filed July 24, 2006 and Proof of Service (Certified Mail and Return Receipt Requested forms) dated July 26, 2006.
6. Resolution 2006-1
7. Email from Norman Matteoni dated August 8, 2006 (1 page)
8. Letter from Norman Matteoni received August 10, 2006 (2 pages)
9. Fax from Norm Matteoni received August 15, 2006 (3 pages)
10. Fax from Kent G. Washburn received August 16, 2006 (3 pages)
11. Fax from Kent G. Washburn received August 17, 2006 (1 page)
12. Fax from Kent G. Washburn received August 17, 2006 (6 pages)
13. Fax from Kent G. Washburn received August 18, 2006 (1 page)

Attached:

14. Calls for Service Spreadsheet from Police Department (3 pages)
15. Chart of Seating at Bars (1 page)
16. Chart of Total Calls per Seat (1 page)

Distribution:

Cynthia Goguen, 408 N. Santa Cruz Ave., Los Gatos, CA 95030

Jim Zanardi, 16401 S. Kennedy Rd, Los Gatos, CA 95030

Kent Washburn, 123 Jewell Street, Santa Cruz, CA 95060

William Conners, P.O. Box 1521, Pebble Beach, CA 93953

Norman Matteoni, Matteoni, O'Laughlin & Hechtman, 848 The Alameda, San Jose, CA 95126

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CALLS FOR SERVICE IN DOWNTOWN BAR AREA

11/01/99 - 05/01/06

Call Type Translation	Call Type	Last Call 408 N SC	Mtn Charley's 15 N SC	Los Gatos Bar & Grill 15 #1-2 N SC	Blvd Tavern 15043 LG	Carrie Nations 8 N SC	Black Watch 141 N SC or 1/2	Number One Broadway 102 S SC
under the influence of a controll	11550	3	1	0	1	0	0	0
misdemeanor DUI	23152	14	6	0	8	3	2	0
disturbance	415	37	74	18	4	12	1	5
disturbance argument	415A	29	40	10	16	9	7	1
disturbance family	415DOM	1	0	0	0	0	0	1
disturbance fight	415F	14	62	10	10	14	3	1
disturbance fireworks	415FW	0	0	0	1	0	0	0
disturbance juvenile	415J	1	19	6	0	1	1	0
disturbance noise	415N	2	16	5	9	0	1	8
disturbance threats	415T	6	0	0	3	0	0	1
drunk in public	647F	71	84	16	20	16	6	5
<b>TOTAL</b>		<b>178</b>	<b>302</b>	<b>65</b>	<b>72</b>	<b>55</b>	<b>21</b>	<b>22</b>
auto alarm	1033A	0	2	0	0	1	0	0
commercial alarm	1033C	0	21	0	16	0	1	0
open door	1034	0	3	2	0	0	0	0
injury	1045	0	3	2	2	6	0	0
sick person	1046	1	6	1	0	1	1	0
resuscitator	1052	1	0	0	0	0	0	0
person down	1053	3	2	0	1	1	0	2
meet the citizen	1062	4	8	1	4	4	1	4
missing person	1065	2	1	1	1	0	0	0
recovered missing person	1065R	0	1	0	0	0	0	0
suspicious person	1066	24	9	1	4	3	1	2
call for help	1067	0	0	0	0	1	0	0
stabbing	1072	0	0	0	1	0	0	0
stolen vehicle	10851	4	6	0	4	2	0	1
recovered stolen vehicle	10851R	1	0	0	0	0	0	0
monte sereno patrol time	1090	0	1	0	0	0	0	0
animal misc	1091	0	1	0	1	1	1	1
vicious animal	1091A	0	0	0	0	0	0	1
barking animal	1091B	1	0	0	0	0	0	1
dead animal	1091D	0	0	0	1	0	0	0
monte sereno directed traffic	1094	2	0	0	0	0	0	0
person stop	1095	79	16	14	14	7	5	1
traffic hazard	1125	0	1	0	3	2	1	0
found bicycle	1126	0	0	0	0	1	0	0
unauthorized possession	11377	1	0	0	3	0	0	0
suspicious vehicle	1154	80	24	7	42	11	0	2
major injury accident	1180	1	0	0	1	0	1	0
minor injury accident	1181	0	0	0	0	0	0	0
accident property damage	1182	5	4	0	7	1	2	0
unknown injury accident	1183	0	0	0	1	0	0	0
traffic control	1184	1	1	0	0	1	0	0
illegal weapon	12020	0	0	0	1	0	0	0
suspended license	14601	3	0	0	2	0	0	0
resisting arrest	148	0	1	0	1	1	0	0
court order violation	166.4	1	0	0	0	0	0	0
misdemeanor hit and run	20002	3	3	0	3	0	1	1
armed robbery	211	1	0	0	1	0	0	0
attempted rape	220	0	0	0	0	0	1	0
speeding	22350	0	0	0	1	0	0	0
exp or misc tow	22651	1	0	0	0	0	0	0
reckless driving	23103	0	2	1	0	0	0	0
assault/battery	242	19	32	4	10	8	8	4
assault with a deadly weapon	245	5	8	1	2	0	0	0

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juvenile with alcohol	25662	1	0	0	0	1	0	0
domestic violence	273	2	1	0	0	0	0	0
parole violation	3056	1	0	0	1	0	0	0
indecent exposure	314	1	0	0	0	0	0	0
terrorist threats	422	0	0	0	1	0	0	0
arson	451	1	0	0	0	0	0	0
auto burglary	459A	1	2	0	1	0	0	0
commercial burglary	459C	0	0	0	0	0	1	0
forgery	470	0	1	0	0	0	0	0
theft	484	8	16	1	9	2	0	12
credit card theft	484G	1	0	0	0	0	0	0
grand theft	487	2	2	0	0	1	1	0
mentally unstable	5150	1	1	0	2	2	0	0
defrauding an innkeeper	537	0	0	1	0	0	1	0
vandalism	594	2	7	3	6	2	1	0
trespassing	602	3	0	0	1	0	0	0
annoying phone calls	653M	1	0	0	1	1	0	0
fire	904	1	0	0	0	0	0	0
911 hang up	911	6	4	0	6	3	4	2
assist fire dept	ASTFD	0	1	0	0	0	1	0
attempt to contact	ATC	3	0	0	1	0	0	0
bar check	BARCK	226	470	51	203	29	9	28
BP violation	BP	1	0	1	0	0	0	0
stakeout	C5	6	0	0	0	0	0	0
citizen assist	CITAST	7	5	0	0	1	0	1
civil situation	CIVIL	1	0	0	0	0	0	0
civil stand by	CSB	5	0	0	0	0	0	0
cite sign off	CSO	0	1	0	0	0	0	0
notice of driver license suspens	DL310	4	6	0	2	2	0	0
department of public works	DPW	2	0	0	0	0	0	0
DUI be on the lookout	DUIBOL	3	0	2	0	0	0	0
flagged down	FD	18	12	2	3	7	1	0
foot patrol	FPAT	5	16	2	3	3	2	0
found property	FPROP	1	7	1	1	2	0	1
fraud	FRAUD	0	2	0	1	0	0	0
follow up	FU	21	23	0	19	4	4	1
health and safety violation	HS	10	2	2	7	1	0	1
lost property	LPROP	3	20	2	1	6	1	3
motorist assist	MA	3	0	0	1	0	0	0
man with a gun	MANGUN	0	1	0	1	1	0	0
medical aid	MEDAID	2	1	0	1	2	0	0
assist chp	OACHP	2	0	0	1	0	0	0
assist other	OAQ	0	0	0	1	0	0	0
assist sheriff office	OASO	0	1	0	1	0	0	0
other incident	OTHER	1	0	0	0	0	0	0
parking violation	PARKER	4	9	2	8	2	2	1
patrol check	PATCK	17	22	5	13	3	4	1
penal code violation	PC	9	8	1	5	0	2	2
patrol information	PINFO	6	9	1	5	2	2	2
private property tow	PPT	1	3	0	4	0	0	0
special investigative unit	SIU	1	0	0	0	0	0	0
skateboarding violation	SKTBRD	0	2	2	1	0	0	0
special assignment	SPEC	11	1	0	0	0	0	0
subject stop	SS	88	39	6	25	5	0	0
stalking	STALK	0	0	0	1	0	0	0
suspicious circumstance	SUSCIR	2	3	1	5	0	0	0
traffic stop	T	225	76	16	75	31	3	1

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town code	TCODE	16	7	0	2	0	0	0	
test code	TEST	1	7	1	2	0	0	0	
temporary restraining order	TRO	1	0	0	1	0	0	0	
unknown circumstance	UNKCIR	4	1	0	0	0	0	1	
vehicle code	VC	4	5	0	5	0	0	0	
vehicle tow	VTOW	3	1	0	0	1	1	0	
warrant service	WARSVC	32	6	0	15	1	1	0	
welfare check	WELCK	2	5	1	4	6	1	0	
	<b>TOTAL</b>	<b>1026</b>	<b>962</b>	<b>139</b>	<b>573</b>	<b>173</b>	<b>66</b>	<b>77</b>	<b>3016</b>
	<b>G TOTAL of all Calls for Service</b>	<b>1204</b>	<b>1264</b>	<b>204</b>	<b>645</b>	<b>228</b>	<b>87</b>	<b>99</b>	<b>3731</b>
	<b>Total police reports written per location</b>	<b>194</b>	<b>181</b>	<b>28</b>	<b>106</b>	<b>39</b>	<b>19</b>	<b>22</b>	<b>589</b>

**SEATS PER BAR**

		<b>Mtn. Charley's</b>	<b>Boulevard Tavern</b>	<b>Carrie Nations</b>	<b>Black Watch</b>	<b>Number One Broadway</b>
<b>Seats</b>	45	110	66	45	55	93



